

AMENDED IN ASSEMBLY JANUARY 5, 2016

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 1386**

**Introduced by Assembly Member Low**

February 27, 2015

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An act to add Section 4119.4 to the Business and Professions Code, to amend Section 1714.23 of the Civil Code, and to amend Section 1797.197a of the Health and Safety Code, relating to emergency medical care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1386, as amended, Low. Emergency medical care: epinephrine auto-injectors.

(1) Existing law authorizes a prehospital emergency medical care person, first responder, or lay rescuer to use an epinephrine auto-injector to render emergency care to another person, as specified. Existing law requires the Emergency Medical Services Authority to approve authorized training providers and the minimum standards for training and the use and administration of epinephrine auto-injectors. The existing Pharmacy Law, also authorizes a pharmacy to dispense epinephrine auto-injectors to a prehospital emergency medical care person, first responder, or lay rescuer for the purpose of rendering emergency care in accordance with these provisions. A violation of the Pharmacy Law is a crime.

This bill would permit an “authorized entity,” as defined, to use an epinephrine auto-injector to render emergency care to another person in accordance with these provisions. The bill would also authorize a pharmacy to furnish epinephrine auto-injectors to an authorized entity pursuant to those provisions. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program. The bill would require an authorized entity to create and maintain a specified operations plan relating to its use of epinephrine auto-injectors, and would require those entities to submit a report to the State Department of Public Health on incidents related to the administration of epinephrine auto-injectors. The bill would also require the department to issue an annual report summarizing and analyzing the reports submitted to the department pursuant to the bill’s provisions.

(2) Under existing law, everyone is generally responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. Existing law also provides that a prehospital emergency care person, first responder, or lay rescuer who administers an epinephrine auto-injector to another person who appears to be experiencing anaphylaxis at the scene of an emergency situation, in good faith and not for compensation, is not liable for any civil damages resulting from his or her acts or omissions in administering the epinephrine auto-injector, if that person has complied with specified certification and training requirements and standards.

This bill would provide that ~~employees, agents, any employee, agent,~~ or other trained ~~individuals~~ *individual* of an authorized entity who administers an epinephrine auto-injector to another person who appears to be experiencing anaphylaxis at the scene of an emergency situation, in good faith and not for compensation, is not liable for any civil damages resulting from his or her acts or omissions in administering the epinephrine auto-injector, if that person has complied with specified certification and training requirements and standards. The bill would also provide that an authorized entity ~~located in this state shall not be liable, in this state, for any injuries or related damages that result from the provision or administration of an epinephrine auto-injector by its employees or agents outside of this state if the entity or its employee or agent would not have been liable for those injuries or related damages had the provision or administration occurred within this state.~~ *is not*

*liable for any civil damages resulting from any act or omission connected to the administration of an epinephrine auto-injector, as specified.*

(3)The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4119.4 is added to the Business and  
2 Professions Code, to read:

3 4119.4. (a) Notwithstanding any other law, a pharmacy may  
4 furnish epinephrine auto-injectors to an authorized entity, as  
5 defined by Section 1797.197a of the Health and Safety Code, if  
6 both of the following requirements are met:

7 (1) The epinephrine auto-injectors are furnished exclusively for  
8 ~~use at or in connection with an authorized entity.~~ *the possession*  
9 *of an authorized entity and for use by its employees, volunteers,*  
10 *and agents, first responder, or by a family member or caregiver*  
11 *of the person who appears to be experiencing anaphylaxis, as*  
12 *defined by paragraph (1) of subdivision (a) of Section 1714.23 of*  
13 *the Civil Code, or by the person who appears to be experiencing*  
14 *anaphylaxis, as defined by paragraph (1) of subdivision (a) of*  
15 *Section 1714.23 of the Civil Code.*

16 (2) An authorized health care provider provides a prescription  
17 that specifies the quantity of epinephrine auto-injectors to be  
18 furnished.

19 (b) The pharmacy shall label each epinephrine auto-injector  
20 dispensed with all of the following:

21 (1) The name of the person or entity to whom the prescription  
22 was issued.

23 (2) The designations “Section 1797.197a Responder” and “First  
24 Aid Purposes Only.”

25 (3) The dosage, use, and expiration date.

26 (c) Each dispensed prescription shall include the manufacturer’s  
27 product information sheet for the epinephrine auto-injector.

(d) Records regarding the acquisition and disposition of epinephrine auto-injectors furnished pursuant to subdivision (a) shall be maintained by the authorized entity for a period of three years from the date the records were created. The authorized entity shall be responsible for monitoring the supply of epinephrine auto-injectors and ensuring the destruction of expired epinephrine auto-injectors.

(e) The epinephrine auto-injector dispensed pursuant to this section may be used only for the purpose, and under the circumstances, described in Section 1797.197a of the Health and Safety Code.

SEC. 2. Section 1714.23 of the Civil Code is amended to read: 1714.23. (a) For purposes of this section, the following definitions shall apply:

(1) “Anaphylaxis” means a potentially life-threatening hypersensitivity or allergic reaction to a substance.

(A) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.

(B) Causes of anaphylaxis may include, but are not limited to, insect stings or bites, foods, drugs, and other allergens, as well as idiopathic or exercise-induced anaphylaxis.

(2) “Epinephrine auto-injector” means a disposable drug delivery system with a spring-activated concealed needle that is designed for emergency administration of epinephrine to provide rapid, convenient first aid for persons suffering from anaphylaxis.

(b) (1) Any person described in subdivision (b) of Section 1797.197a of the Health and Safety Code ~~or employees, agents, or other trained individuals of an authorized entity, as defined by paragraph (2) of subdivision (a) of Section 1797.197a of the Health and Safety Code,~~ who administers an epinephrine auto-injector, in good faith and not for compensation, to another person who appears to be experiencing anaphylaxis at the scene of an emergency situation is not liable for any civil damages resulting from his or her acts or omissions in administering the epinephrine auto-injector, if that person has complied with the requirements and standards of Section 1797.197a of the Health and Safety Code.

(2) An authorized health care provider that prescribes or dispenses an epinephrine auto-injector ~~or a pharmacist that dispenses an epinephrine auto-injector~~ to a person described in

1 subdivision (b) of Section 1797.197a of the Health and Safety  
2 Code or an authorized entity is not liable for any civil damages  
3 resulting from any act or omission related to the provision of an  
4 epinephrine auto-injector.

5 (3) A person that conducts the training described in subdivision  
6 (c) of Section 1797.197a of the Health and Safety Code is not  
7 liable for any civil damages resulting from any act or omission  
8 ~~related to the acquisition, possession, administration, or provision~~  
9 ~~of an~~ *of the lay rescuer, as defined by paragraph (4) of subdivision*  
10 *(a) of Section 1797.197a of the Health and Safety Code, who*  
11 *renders emergency care by administering the epinephrine*  
12 *auto-injector.*

13 (4) (A) ~~An authorized entity located in this state shall not be~~  
14 ~~liable, in this state, for any injuries or related damages that result~~  
15 ~~from the provision or for any civil damages resulting from any act~~  
16 ~~or omission other than an act or omission constituting gross~~  
17 ~~negligence or willful or wanton misconduct connected to the~~  
18 ~~administration of an epinephrine auto-injector by its employees~~  
19 ~~or agents outside of this state if the entity or its employee or agent~~  
20 ~~would not have been liable for those injuries or related damages~~  
21 ~~had the provision or administration occurred within this state; any~~  
22 ~~one of its employees, volunteers, or agents who is a lay rescuer,~~  
23 ~~as defined by paragraph (4) of subdivision (a) of Section 1797.197a~~  
24 ~~of the Health and Safety Code, or who, in good faith, and not for~~  
25 ~~compensation, renders emergency medical or nonmedical care at~~  
26 ~~the scene of an emergency.~~

27 ~~(5) An authorized entity that possesses and makes available~~  
28 ~~epinephrine auto-injectors, including third parties that facilitate~~  
29 ~~the availability of epinephrine auto-injectors to an authorized entity,~~  
30 ~~is not liable for any injuries or related damages that result from~~  
31 ~~any act or omission taken pursuant to this section.~~

32 (B) *The failure of an authorized entity to possess or administer*  
33 *an epinephrine auto-injector shall not result in civil liability.*

34 (6)  
35 (5) ~~This subdivision does not eliminate, limit, or reduce affect~~  
36 ~~any other immunity or defense that may otherwise be is available~~  
37 ~~under state law. law, including, but not limited to, the immunity~~  
38 ~~from liability for any civil damages resulting from any act or~~  
39 ~~omission other than an act or omission constituting gross~~  
40 ~~negligence or willful or wanton misconduct of a person who in~~

1 *good faith, and not for compensation, renders emergency medical*  
2 *or nonmedical care at the scene of an emergency as provided by*  
3 *section 1799.102 of the Health and Safety Code.*

4 (c) The protection specified in subdivision (b) shall not apply  
5 in a case of personal injury or wrongful death that results from the  
6 gross negligence or willful or wanton misconduct of the person  
7 who renders emergency care treatment by the use of an epinephrine  
8 auto-injector.

9 (d) Nothing in this section relieves a manufacturer, designer,  
10 developer, distributor, or supplier of an epinephrine auto-injector  
11 of liability under any other applicable law.

12 SEC. 3. Section 1797.197a of the Health and Safety Code is  
13 amended to read:

14 1797.197a. (a) For purposes of this section, the following  
15 definitions shall apply:

16 (1) "Anaphylaxis" means a potentially life-threatening  
17 hypersensitivity or allergic reaction to a substance.

18 (A) Symptoms of anaphylaxis may include shortness of breath,  
19 wheezing, difficulty breathing, difficulty talking or swallowing,  
20 hives, itching, swelling, shock, or asthma.

21 (B) Causes of anaphylaxis may include, but are not limited to,  
22 insect stings or bites, foods, drugs, and other allergens, as well as  
23 idiopathic or exercise-induced anaphylaxis.

24 (2) "Authorized entity" means any *for-profit, nonprofit, or*  
25 *government entity or organization in connection with, or at which,*  
26 *allergens capable of causing anaphylaxis may be present, including,*  
27 *but not limited to, recreation camps, colleges and universities, day*  
28 *care facilities, youth sports leagues, amusement parks, restaurants,*  
29 *places of employment, and sports arenas; that employs at least one*  
30 *person or utilizes at least one volunteer or agent that has*  
31 *voluntarily completed a training course as described in subdivision*  
32 *(c).*

33 (3) "Epinephrine auto-injector" means a disposable drug delivery  
34 system with a spring-activated concealed needle that is designed  
35 for emergency administration of epinephrine to provide rapid,  
36 convenient first aid for persons suffering from anaphylaxis.

37 (4) "Lay rescuer" means any person who has met the training  
38 standards and other requirements of this section but who is not  
39 otherwise licensed or certified to use an epinephrine auto-injector  
40 on another person.

1 (5) “Prehospital emergency medical care person” has the same  
2 meaning as defined in paragraph (2) of subdivision (a) of Section  
3 1797.189.

4 (b) A prehospital emergency medical care ~~person, lay rescuer,~~  
5 ~~or employees, agents, or other trained individuals of an authorized~~  
6 ~~entity~~ *person or lay rescuer* may use an epinephrine auto-injector  
7 to render emergency care to another person if all of the following  
8 requirements are met:

9 (1) The epinephrine auto-injector is legally obtained by  
10 prescription from an authorized health care provider or from an  
11 authorized entity that acquired the epinephrine auto-injector  
12 pursuant to subdivision (e). An authorized health care provider  
13 may issue a prescription for an epinephrine auto-injector to a person  
14 described in this subdivision for the purpose of rendering  
15 emergency care to another person, upon presentation of current  
16 certification demonstrating that person is trained and qualified to  
17 administer an epinephrine auto-injector as a prehospital emergency  
18 medical care person or lay rescuer, pursuant to this section or any  
19 other statute or regulation.

20 (2) The epinephrine auto-injector is used on another, with the  
21 expressed or implied consent of that person, to treat anaphylaxis.

22 (3) The epinephrine auto-injector is stored and maintained as  
23 directed by the manufacturer’s instructions for that product.

24 (4) The person using the epinephrine auto-injector has  
25 successfully completed a course of training with an authorized  
26 training provider, as described in subdivision (c), and has current  
27 certification of training issued by the provider.

28 (5) The epinephrine auto-injectors obtained by prehospital  
29 emergency medical care personnel pursuant to Section 4119.3 of  
30 the Business and Professions Code shall be used only when  
31 functioning outside the course of the person’s occupational duties,  
32 or as a volunteer, pursuant to this section.

33 (6) The Emergency Medical Services System is activated as  
34 soon as practicable when an epinephrine auto-injector is used.

35 (c) (1) The authorized training providers shall be approved,  
36 and the minimum standards for training and the use and  
37 administration of epinephrine auto-injectors pursuant to this section  
38 shall be established and approved, by the authority. The authority  
39 may designate existing training standards for the use and  
40 administration of epinephrine auto-injectors by prehospital

1 emergency medical care personnel to satisfy the requirements of  
2 this section.

3 (2) The minimum training and requirements shall include all of  
4 the following components:

5 (A) Techniques for recognizing circumstances, signs, and  
6 symptoms of anaphylaxis.

7 (B) Standards and procedures for proper storage and emergency  
8 use of epinephrine auto-injectors.

9 (C) Emergency followup procedures, including activation of  
10 the Emergency Medical Services System, by calling the emergency  
11 9-1-1 telephone number or otherwise alerting and summoning  
12 more advanced medical personnel and services.

13 (D) Compliance with all regulations governing the training,  
14 indications, use, and precautions concerning epinephrine  
15 auto-injectors.

16 (E) Written material covering the information required under  
17 this provision, including the manufacturer product information  
18 sheets on commonly available models of epinephrine auto-injectors.

19 (F) Completion of a training course in cardiopulmonary  
20 resuscitation and the use of an automatic external defibrillator  
21 (AED) for infants, children, and adults that complies with  
22 regulations adopted by the authority and the standards of the  
23 American Heart Association or the American Red Cross, and a  
24 current certification for that training.

25 (3) Training certification shall be valid for no more than two  
26 years, after which recertification with an authorized training  
27 provider is required.

28 (4) The director may, in accordance with regulations adopted  
29 by the authority, deny, suspend, or revoke any approval issued  
30 under this subdivision or may place any approved training provider  
31 on probation upon a finding by the director of an imminent threat  
32 to public health and safety, as evidenced by any of the following:

33 (A) Fraud.

34 (B) Incompetence.

35 (C) The commission of any fraudulent, dishonest, or corrupt  
36 act that is substantially related to the qualifications, functions, or  
37 duties of training program directors or instructors.

38 (D) Conviction of any crime that is substantially related to the  
39 qualifications, functions, or duties of training program directors



1 or instructors. The record of conviction or a certified copy of the  
2 record shall be conclusive evidence of the conviction.

3 (E) Violating or attempting to violate, directly or indirectly, or  
4 assisting in or abetting the violation of, or conspiring to violate,  
5 any provision of this section or the regulations promulgated by the  
6 authority pertaining to the review and approval of training  
7 programs in anaphylaxis and the use and administration of  
8 epinephrine auto-injectors, as described in this subdivision.

9 (d) (1) The authority shall assess a fee pursuant to regulation  
10 sufficient to cover the reasonable costs incurred by the authority  
11 for the ongoing review and approval of training and certification  
12 under subdivision (c).

13 (2) The fees shall be deposited in the Specialized First Aid  
14 Training Program Approval Fund, which is hereby created in the  
15 State Treasury. All moneys deposited in the fund shall be made  
16 available, upon appropriation, to the authority for purposes  
17 described in paragraph (1).

18 (3) The authority may transfer unused portions of the Specialized  
19 First Aid Training Program Approval Fund to the Surplus Money  
20 Investment Fund. Funds transferred to the Surplus Money  
21 Investment Fund shall be placed in a separate trust account, and  
22 shall be available for transfer to the Specialized First Aid Training  
23 Program Approval Fund, together with the interest earned, when  
24 requested by the authority.

25 (4) The authority shall maintain a reserve balance in the  
26 Specialized First Aid Training Program Approval Fund of 5 percent  
27 of annual revenues. Any increase in the fees deposited in the  
28 Specialized First Aid Training Program Approval Fund shall be  
29 effective upon determination by the authority that additional  
30 moneys are required to fund expenditures pursuant to subdivision  
31 (c).

32 (e) An authorized health care provider may prescribe epinephrine  
33 auto-injectors to an authorized entity or to an employee or agent  
34 of an authorized entity who holds a valid certification  
35 demonstrating that the person is trained and qualified to administer  
36 an epinephrine auto-injector as a lay rescuer. ~~entity.~~ Epinephrine  
37 auto-injectors acquired by an authorized entity shall be stored in  
38 a location readily accessible in an emergency and in accordance  
39 with the epinephrine auto-injectors instructions for use and any  
40 additional requirements that may be established by the authority.

(f) An authorized entity that possesses and makes available epinephrine auto-injectors shall do both of the following:

(1) Create and maintain on its premises an operations plan that includes all of the following:

(A) The name and contact number for the authorized health care provider who prescribed the epinephrine auto-injector.

(B) Where and how the epinephrine auto-injector will be stored.

(C) The names of the designated employees or agents who have completed the training program required by this section and who are authorized to administer the epinephrine auto-injector.

(D) How and when the epinephrine auto-injector will be inspected for an expiration date.

(E) The process to replace the expired epinephrine auto-injector, including the proper disposal of the expired epinephrine auto-injector.

(2) Submit to the State Department of Public Health, on a form developed by the State Department of Public Health, a report of each incident on the authorized entity's premises that involves the administration of an epinephrine auto-injector. The State Department of Public Health shall annually publish a report that summarizes and analyzes all reports submitted to it under this subdivision.

(g) This section shall not apply to a school district or county office of education, or its personnel, that provides and utilizes epinephrine auto-injectors to provide emergency medical aid pursuant to Section 49414 of the Education Code.

(h) This section shall not be construed to limit or restrict the ability of prehospital emergency medical care personnel, under any other statute or regulation, to administer epinephrine, including the use of epinephrine auto-injectors, or to require additional training or certification beyond what is already required under the other statute or regulation.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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